

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

AMERICANS FOR IMMIGRANT JUSTICE, INC.,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 19-_____
	:	
UNITED STATES DEPARTMENT OF HOMELAND SECURITY and UNITED STATES CUSTOMS AND BORDER PROTECTION,	:	
	:	
Defendants.	:	
	:	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, seeking disclosure of records concerning the operations, activities and policies of the United States Customs and Border Protection (“CBP”), a component of the United States Department of Homeland Security (“DHS”), related to its contractual relationships with medical providers serving the following CBP holding stations: Brownsville, Corpus Christi, Falfurrias, Fort Brown, Harlingen, Kingsville, McAllen, Rio Grande City, and Weslaco (hereinafter collectively referred to as the “RGV Sector”).

2. Americans for Immigrant Justice, Inc. (“AI Justice”) seeks declaratory, injunctive and other appropriate relief with respect to Defendants’ unlawful withholding of the requested records.

3. CBP is responsible, among other duties, for securing the borders of the United States. In furtherance of this obligation, CBP officers routinely admit or exclude individuals

seeking entry into the United States, make arrests, and detain non-citizens. When individuals detained by CBP are transported from CBP holding stations, to other DHS facilities, including ones in other states, or into the custody of other government agencies, they must be medically screened and cleared to confirm suitability for transport.

4. CBP routinely contracts with local private medical providers to assess whether detainees are sufficiently healthy and otherwise capable of being transported, especially if traveling by airplane, long distances, and if the detainee has any obvious serious and/or limiting illness.

5. AI Justice attorneys conduct regular “Know Your Rights” presentations to detainees at ICE facilities and Office of Refugee Resettlement (“ORR”) funded youth shelters in Florida. These attorneys interview hundreds of detained immigrants every year and directly represent many of them.

6. Over recent years, AI Justice has noticed that a number of detainees interviewed and/or represented by AI Justice, who were transported from the RGV Sector, received perfunctory medical screening prior to such transports. A particularly horrific incident involving a young child with very serious physical and developmental conditions, who was not at all suited for commercial airline travel, but was nevertheless cleared for travel, came to the attention of AI Justice.

7. Based on this incident and related observances, AI Justice submitted a FOIA request to CBP in January 2017, seeking records related to CBP contracts for medical services with providers in the RGV Sector, data regarding the number of detainees subjected to travel clearances, as well as other related statistical data. FOIA Request dated January 16, 2017, attached hereto as Exhibit A. CBP failed to respond to AI Justice’s FOIA request.

8. The information sought by this FOIA request has become even more relevant and necessary in the current environment where young children lacking appropriate medical screenings at the southern U.S. border are dying in CBP detention. Monica Ortiz Uribe, *After Death of Second Migrant Child, CBP Will Examine All Children Under 10 Years Old*, NPR (December 26, 2018, 4:06 PM), <https://www.npr.org/2018/12/26/680260461/after-death-of-second-migrant-child-cbp-will-examine-all-children-under-10-years>.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this Complaint and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331 and 1361. The Court's review of this matter is *de novo*.

10. Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because Plaintiff AI Justice's principal place of business is located in the Southern District of Florida.

11. Declaratory and further necessary and appropriate relief is authorized pursuant to 28 U.S.C. §§2201-2202 and Rule 57, Federal Rules of Civil Procedure, Fed. R. Civ. P. 57.

12. Plaintiff AI Justice has exhausted any and all administrative remedies in connection with its FOIA request and appeal.

PARTIES

13. Plaintiff AI Justice is a non-profit organization with its principal place of business located at 6355 NW 36th Street, Suite 2201, Miami, FL 33166. AI Justice is a legal assistance organization dedicated to promoting the basic human rights of immigrants of all nationalities through public education, advocacy, and impact litigation since 1996. AI Justice

champions the rights of unaccompanied immigrant children, advocates on behalf of victims of domestic violence and human trafficking, serves as a watchdog on immigration detention practices and policies, and speaks for immigrants who have particular and compelling claims to justice.

14. Defendant DHS is a department of the executive branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f). DHS is responsible for enforcing federal immigration laws. DHS has possession and control over the records sought by AI Justice.

15. Defendant CBP is a component of DHS and is an agency within the meaning of 5 U.S.C. § 552(f). Among other duties, CBP is responsible for securing the borders of the United States, including detaining non-citizens who enter without authorization and operating detention facilities for that purpose. CBP has possession and control over the records sought by AI Justice.

STATEMENT OF FACTS

16. On January 16, 2017, AI Justice submitted a FOIA request to CBP seeking:

[D]isclosure of any and all records that were authored, prepared, received, collected and/or maintained by or transmitted to the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP) that describe, refer or relate to DHS and/or CBP's contractual or other relationship with all medical providers serving the following CBP stations: CBP Station Brownsville, CBP Station Corpus Christi, CBP Station Falfurrias, CBP Station Fort Brown, CBP Station Harlingen, CBP Station Kingsville, CBP Station McAllen, CBP Station Rio Grande City, CBP Station Weslaco (hereinafter collectively referred to as the "RGV Sector" or the "Rio Grande Valley Sector").

See Ex. A.

17. The FOIA request identified eight separate categories of records sought

and specified a relevant time period of documents dated between January 2012 to December 2016, inclusive. *See Ex. A.*

18. The requested documents fall into three main categories of information maintained by and in the possession of DHS and CBP, relevant to: (1) DHS/CBP contracts for medical services with providers in the RGV Sector; (2) data regarding the number of detainees transported to medical providers, subjected to travel screenings, and the numbers of those receiving medical travel clearances; and (3) policies and procedures regarding requests and/or needs for medical travel clearances for individuals in DHS/CBP custody being transported out of the RGV Sector.

19. Each sub-section of the FOIA request reasonably describes the category of records sought and included sufficient information to allow CBP to conduct a reasonable search for responsive documents, as required by 5 U.S.C. § 552(a)(3)(A). *See Ex. A at 2.* AI Justice's FOIA request also sought a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(iii). *Id.* at 3-4.

20. More than a month after submitting the request, AI Justice received, via electronic mail, an acknowledgment notice from CBP on February 23, 2017, confirming receipt of its FOIA request. CBP auto reply acknowledgment notice, February 23, 2017, attached hereto as Exhibit B.

21. Having received no further response, on April 26, 2017, AI Justice submitted to CBP a status inquiry regarding a response to its FOIA request, however, CBP failed to respond. AI Justice status inquiry to CBP dated April 26, 2017, attached hereto as Exhibit C.

22. A subsequent status inquiry by AI Justice on July 7, 2017 similarly resulted in no response from CBP. AI Justice status inquiry to CBP dated July 7, 2017, attached hereto as Exhibit D. A concurrent review of CBP's FOIA website information indicated at that

time that the “Estimated Date of Completion” was “March 23, 2017”, that the “Final Disposition” was “Undetermined” and that “[t]he description of this request is under Agency review.” *See id.*

23. After several more months with no response from CBP, on December 15, 2017, AI Justice filed an administrative appeal of CBP’s constructive denial of its FOIA request by failing to respond, and a restatement of its request for a fee waiver. Notice of Appeal dated December 15, 2017, attached hereto as Exhibit E.

24. Evidently, CBP experienced confusion during the processing of this FOIA request. Initially, on December 26, 2017 CBP indicated via email correspondence to AI Justice that the “FOIA request CBP-2017-033315 has had its Tracking Number changed to CBP-AP-2017-033315” and the very next day, on December 27, 2017, CBP reversed this change, indicating that “FOIA request CBP-AP-2017-033315 has had its Tracking Number changed (back) to CBP-2017-033315.” CBP appeal tracking notice dated December 26, 2017, attached hereto as Exhibit F; CBP appeal tracking notice dated December 27, 2017, attached hereto as Exhibit G.

25. The following day, on December 28, 2017, AI Justice received a letter from CBP FOIA Appeals remanding the request to the FOIA Division for processing. CBP FOIA Appeals notice of remand dated December 28, 2017, attached hereto as Exhibit H. The letter further indicated that the review of records is ongoing, that “it may not be possible for the records to be processed within 20 days” and “[i]f so, FOIA Division should advise you of the time required to respond to the request.” *Id.* Finally, AI Justice was advised that it “may immediately challenge FOIA Division’s failure to respond to [its] request in District Court.” *Id.*

26. Having received no communication from the FOIA Division after the

expiration of more than twenty days after the remand, on January 24, 2018 AI Justice requested mediation services offered by the Office of Government Information Services (“OGIS”), seeking to resolve CBP’s failure to respond to its FOIA request without having to pursue litigation. AI Justice mediation request to OGIS dated January 24, 2018, attached hereto as Exhibit I.

27. On February 6, 2018 OGIS issued AI Justice an acknowledgment letter of its request for mediation. OGIS acknowledgment letter dated February 6, 2018, attached hereto as Exhibit J.

28. AI Justice submitted an inquiry to OGIS regarding the status of mediation. AI Justice status inquiry to OGIS dated March 21, 2018, attached hereto as Exhibit K.

29. Three months after the remand, AI Justice submitted a status inquiry to CBP regarding a response to its FOIA request. AI Justice status inquiry to CBP dated March 21, 2018, attached hereto as Exhibit L.

30. OGIS responded to AI Justice on March 23, 2018, acknowledging that the matter was internally assigned for review two months after receipt of the mediation request “due to an increase in the demand for OGIS’s FOIA dispute resolution services.” OGIS assignment letter dated March 23, 2018, attached hereto as Exhibit M.

31. On March 27, 2018 CBP confirmed receipt of AI Justice’s remanded FOIA request, indicating that it “will be processed in the order it was received” and that CBP will notify “once responsive records are available.” CBP remand acknowledgment letter dated March 27, 2018, attached hereto as Exhibit N. CBP further indicated that the estimated date of completion for the response would be April 10, 2018. *Id.*

32. Also, on March 27, 2018, OGIS reported to AI Justice that “[t]he FOIA

Division informed OGIS that it located thousands of pages responsive to [your] request” and “CBP estimates that it will complete processing [] by April 10, 2018.” OGIS final response dated March 27, 2018, attached hereto as Exhibit O. Additionally, OGIS advised that it would close AI Justice’s case because it “can offer no further assistance.” *Id.*

33. Approximately a month after the estimated completion date of April 10th passed, AI Justice submitted a status request to CBP on May 3, 2018. AI Justice status inquiry to CBP dated May 3, 2018, attached hereto as Exhibit P. And later that same day, AI Justice received a letter from CBP, dated weeks earlier, referred to as the “first interim response,” which determined that 342 pages of the records were partially releasable. CBP first interim response dated April 12, 2018, attached hereto as Exhibit Q.

34. The production consisted of one very long Statement of Work and related documentation, including amendments to the same, for medical services by two entities to be provided only in 2015-2016. *See Ex. Q.* Thus, the production lacked all information for the remainder of period requested, which was from 2012 to 2016, and all data regarding the number of individuals screened. *See Ex. A.*

35. Having received no further production, on July 25, 2018 AI Justice submitted a follow-up status request to CBP regarding the interim response but has never received a reply from CBP. AI Justice status inquiry to CBP dated July 25, 2018, attached hereto as Exhibit R.

36. CBP’s failure to respond to AI Justice’s FOIA request within the statutory timeframe (or otherwise), failure to conduct a reasonable search until after filing of an administrative appeal, and its continued failure to produce the requested records, despite having reportedly “located thousands of pages responsive to [AI Justice’s] request,” violate the FOIA

and impede AI Justice’s efforts to educate the public about CBP operations in general and to inform the immigration bar regarding CBP’s medical screening practices and policies in particular. *See Ex. O at ¶ 5.* Further, CBP is hindering AI Justice’s ability to effectively advocate for justice and fairness for immigrants subject to these negligent practices, particularly now when young children lacking appropriate medical screenings at the southern U.S. border are dying in CBP detention. *See generally ORTIZ URIBE, supra para. 8.*

37. As of the date of the filing of this Complaint, AI Justice received no response to its FOIA request and no further response or production to its remanded FOIA appeal since May 3, 2018, when it received a minuscule and admittedly incomplete “interim” production of 342 partially releasable pages from the requested records. *See Ex. Q.*

38. AI Justice has exhausted administrative remedies as CBP has failed to timely respond to its FOIA request and appeal as required by 5 U.S.C. § 552(a)(6)(C)(i). *See also, e.g. Ruotolo v. Dep’t of Justice, 53 F.3d 48 (2d Cir. 1995)* (“[A]dministrative remedies are ‘deemed exhausted’ if the agency fails to comply with the ‘applicable time limit’ provisions of the FOIA.”).

39. Defendants have violated the applicable statutory time limit for the processing of FOIA requests and appeals.

FIRST CAUSE OF ACTION

Violation of the Freedom of Information Act for Failure to Respond Within the Time Required

40. AI Justice repeats, alleges and incorporates the allegations in paragraphs 1-39 as if fully set forth herein.

41. The FOIA requires agencies to determine within twenty days of a request

for records whether the agency will comply with the request, and immediately notify the requester of the agency's decision, the reasons therefore, and appeal procedures for adverse determinations. 5 U.S.C. § 552(a)(6)(A)(i).

42. The FOIA further requires agencies to make a determination with respect to any appeal within twenty days after the receipt, and if the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination. 5 U.S.C. § 552(a)(6)(A)(ii).

43. A requestor is deemed to have exhausted administrative remedies if the agency fails to comply with the applicable time limit provisions. 5 U.S.C. § 552(a)(6)(C)(i).

44. This Court has jurisdiction to enjoin an agency from withholding agency records and to order the production of agency records improperly withheld, after determining the matter *de novo*. 5 U.S.C. § 552(a)(4)(B).

45. Plaintiff AI Justice properly submitted a request to Defendant CBP for records under the FOIA and established that any applicable fees should be waived. Ex. A.

46. Eleven months passed with no response to AI Justice's FOIA request from CBP, in violation of the FOIA. *See* Ex. E.

47. AI Justice further submitted an appeal to CBP regarding its FOIA request (Ex. E), and received no response for over four months, in violation of the FOIA. Ex. Q.

48. Defendants have violated the applicable statutory time limit for processing of FOIA requests and appeals.

SECOND CAUSE OF ACTION

Violation of the Freedom of Information Act for Failure to Conduct a Reasonable Search and Disclose Responsive Records

49. AI Justice repeats, alleges, and incorporates the allegations in paragraphs 1-48 as if fully set forth herein.

50. Defendants are obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for, and to produce records responsive to, AI Justice's FOIA request, and to promptly produce them.

51. CBP failed to timely conduct a reasonable search for records responsive to AI Justice's FOIA request. Only after AI Justice filed an administrative appeal did CBP begin to conduct an interim search for responsive records, more than one year after receipt of the FOIA request.

52. CBP has not produced any records to AI Justice since April 12, 2018, despite having reportedly "located thousands of pages responsive to [AI Justice's] request," See Ex. O.

53. Defendants' continued failure to disclose and release responsive records to AI Justice's FOIA request thus violates 5 U.S.C. § 552(a)(3) and (a)(6)(A), as well as regulations promulgated thereunder.

54. AI Justice has a legal right to obtain such records, and no legal basis exists for Defendants' failure to search for and disclose them.

55. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) because Defendants continue to improperly withhold agency records in violation of the FOIA. AI Justice will suffer irreparable injury from, and have no adequate legal remedy for, Defendants' illegal withholding of government documents. Unless enjoined by this Court, CBP will continue to violate AI Justice's statutory rights to receive records under FOIA as it has done for over two years.

THIRD CAUSE OF ACTION

Defendants Failed to Grant Plaintiffs Public Interest Fee Waiver Request

56. AI Justice repeats, alleges and incorporates the allegations in paragraphs 1-55 as if fully set forth herein.

57. FOIA requires that each agency promulgate regulations specifying the schedule of fees to be charged for processing a FOIA request. The Act further establishes procedures and guidelines for determining when such fees should be waived or reduced. 5 U.S.C. § 552(a)(4)(A)(i).

58. An agency's fee regulations under FOIA must provide that fees will be limited to reasonable standard charges for document search and duplication when records are neither requested for commercial use, nor requested by an educational or scientific institution or member of the news media. 5 U.S.C. § 552(a)(4)(ii)(II).

59. The regulations also provide that documents "shall be furnished without any charge or at a charge reduced below the fees established . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor." 5 U.S.C. § 552(a)(4)(A)(iii).

60. Moreover, an agency may not assess search or duplication fees if the agency fails to comply with any statutory time limit, provided that no unusual or exceptional circumstances (as those terms are defined in the statute) apply to the processing of the request. 5 U.S.C. § 552(a)(4)(A)(vii).

61. AI Justice is independently entitled to obtain the requested records

immediately at no cost due to Defendants' failure to respond to its FOIA request within the statutory time limit.

62. AI Justice is further entitled to reasonable costs of litigation, including attorneys' fees, pursuant to 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

Wherefore, plaintiff AI Justice respectfully requests that this Court:

- A. assume jurisdiction over this matter;
- B. declare that Defendants' failure to respond to AI Justice's FOIA request and appeal within the statutory time limit violates FOIA;
- C. declare unlawful Defendants' failure to conduct a timely reasonable search for records responsive to AI Justice's FOIA request;
- D. declare that Defendants' failure to disclose records violates FOIA;
- E. order Defendants, including any of their respective components, to conduct a reasonable search responsive to AI Justice's FOIA request;
- F. order Defendants to immediately and expeditiously process AI Justice's FOIA request, and to produce the requested records in their entirety without further delay;
- G. order Defendants to grant AI Justice's fee waiver and waive all fees associated with processing AI Justice's FOIA request;
- H. enjoin Defendants from withholding records responsive to AI Justice's FOIA request;
- I. award AI Justice reasonable attorneys' fees and other litigation costs in accordance with 5 U.S.C. § 552(a)(4)(E); and

J. grant Plaintiff AI Justice all further relief deemed just and proper.

Dated: April 17, 2019

Respectfully submitted,

/s/ Allison M. Norris, Esq.

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